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5 Attorney for Plaintiffs, MARY JO KITOK & CURTIS BELL 2008

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

CPS

10 MARY JO KITOK; CURTIS BELL,

11 Plaintiff,

12 v.

13 ROWTOWN, INC., A California  
14 Corporation, and DOES 1 through 100,  
15 inclusive

16 Defendants.

**C08 03559**

RS

**COMPLAINT FOR DAMAGES AND  
INJUNCTIVE RELIEF FOR  
VIOLATIONS OF: AMERICAN'S  
WITH DISABILITIES ACT; UNRUH  
CIVIL RIGHTS ACT; CALIFORNIA  
DISABLED PERSONS ACT;  
NEGLIGENCE**

**DEMAND FOR JURY**

17  
18  
19  
20 Plaintiffs MARY JO KITOK and CURTIS BELL complain of Defendants  
21 ROWTOWN, INC., A California Corporation, and DOES 1 through 100, inclusive,  
22 (hereinafter referred to as "Defendants") and alleges as follows:

23 **INTRODUCTION:**

24 1. This is a Civil Rights action for discrimination against persons with physical  
25 disabilities, of which Plaintiff is a member of said class, for violation of the Americans  
26 with Disabilities Act and related state laws addressing the defendants' failure to provide  
27 wheelchair accessible transportation. Plaintiff seeks injunctive relief and damages for  
28

1 violations of civil rights and for damages flowing from such violations.

2 **PARTIES:**

3       2. Plaintiff MARY JO KITTOK is a California resident with physical  
4 disabilities. She is an amputee who suffers from arthritis and requires a wheelchair for  
5 mobility.

6       3. Plaintiff CURTIS BELL is a California resident with physical disabilities. He  
7 is an amputee who has a prosthetic device and requires a wheelchair for mobility for  
8 any distance.

9       4. Defendants are or were at the time of the incident the owners and operators  
10 and/or lessors and lessees of the Restaurant located at 700 Cannery Row, Monterey,  
11 California.

12       5. Plaintiffs do not know the true names of Defendants, their business capacities,  
13 their ownership connection to the property and business, or their relative  
14 responsibilities in causing the access violations herein complained of, and alleges a  
15 joint venture and common enterprise by all such Defendants. Plaintiffs are informed  
16 and believe that each of the Defendants herein, including DOES 1 through 100,  
17 inclusive, is responsible in some capacity for the events herein alleged, or is a necessary  
18 party for obtaining appropriate relief. Plaintiffs will seek leave to amend when the true  
19 names, capacities, connections, and responsibilities of the Defendants and DOES 1  
20 through 100, inclusive, are ascertained

21 **FACTUAL ALLEGATIONS:**

22       6. The Restaurant is a facility open to the public, a place of public  
23 accommodation, and a business establishment.

24       7. The Plaintiffs, husband and wife, patronized the Restaurant, to dine, on May  
25 13, 2007.

26       8. During their visit, the Plaintiffs encountered various violations of the  
27 Americans with Disabilities Act Accessibility Guidelines ("ADAAG") and Title 24 of  
28 the California Code of Regulations, including, but not limited to, there were no

1 accessible entrance into the bathrooms, due to excessive pressures required to open the  
2 bathroom doors, and there were inaccessible features in the bathrooms.

3 9. Naturally, Plaintiffs KITOK and BELL were frustrated, angry and/or vexed  
4 as a result of encountering these conditions, these violations of their civil rights, and the  
5 lack of safe, convenient and accessible facilities. Although these injuries are modest in  
6 scope and did not result in any loss of wages or economic damage or medical care or  
7 attention, the continued violation of the Plaintiffs' civil rights by these defendants and  
8 the highly unpleasant emotional distress caused by such unlawful treatment is  
9 attributable to the actions or inactions of the defendants and plaintiff seeks redress from  
10 these defendants for such injury.

11 10. Plaintiffs would like to return and patronize the Defendants' Restaurant,  
12 however, the Plaintiffs are unable to use the Restaurant on a "full and equal" basis until  
13 the Restaurant is brought into compliance with the provisions of the Americans with  
14 Disabilities Act Accessibility Guidelines and state accessibility law as pled herein.  
15 Plaintiffs have been and currently are being deterred from returning and patronizing the  
16 Defendants' Restaurant on a full and equal basis.

17 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH**  
18 **DISABILITIES ACT OF 1990 (On behalf of Plaintiffs and Against All Defendants)**  
(Cal Civ § 51-53)

19 11. The Defendants are persons who either own, operate, lease or lease to a  
20 place of public accommodation. As such, the Defendants are required to (1) ensure that  
21 all construction, alteration, or modification is barrier free and complies with the  
22 Americans with Disabilities Act Accessibility Guidelines ("ADAAG") and Title 24 of  
23 the California Code of Regulations (aka "California Building Code"); and/or (2)  
24 remove all existing barriers where such removal is "readily achievable." The  
25 Defendants have failed to meet these obligations. The existence of readily achievable  
26 removed barriers and barriers in violation of the ADAAG and/or California Building  
27 Code, including, but not limited to, there were no accessible entrance into the  
28 bathrooms, due to excessive pressures required to open the bathroom doors, and there

1 were inaccessible features in the bathrooms, is unlawful and has resulted in the  
 2 defendants' failure to provide full and equal accommodations, advantages, facilities,  
 3 privileges and/or services to the Plaintiffs.

4 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**  
 5 **RIGHTS ACT (On behalf of Plaintiffs and Against All Defendants) (Cal Civ § 51-53)**

6 **12.** The Defendants are persons who either own, operate, lease or lease to a  
 7 place of public accommodation or business establishment. As such, the Defendants are  
 8 required to (1) ensure that all construction, alteration, or modification is barrier free and  
 9 complies with the Americans with Disabilities Act Accessibility Guidelines  
 10 ("ADAAG") and Title 24 of the California Code of Regulations (aka "California  
 11 Building Code"); and (2) remove all existing barriers where such removal is "readily  
 12 achievable." The Defendants have failed to meet these obligations. The Defendants  
 13 intended the physical and architectural condition of their property. The existence of  
 14 readily achievably removed barriers and barriers in violation of the ADAAG and/or  
 15 California Building Code, including, but not limited to, there were no accessible  
 16 entrance into the bathrooms, due to excessive pressures required to open the bathroom  
 17 doors, and there were inaccessible features in the bathrooms, is unlawful and has  
 18 resulted in the defendants' failure to provide full and equal accommodations,  
 19 advantages, facilities, privileges and/or services to the Plaintiffs.

20 **13.** The acts alleged above, which form the basis of the Plaintiffs' discrimination  
 21 claim, are intentional acts.

22 **III. THIRD CAUSE OF ACTION: VIOLATION OF THE CALIFORNIA**  
 23 **DISABLED PERSONS ACT (On behalf of Plaintiffs and Against All**  
 24 **Defendants) (Cal Civ § 54-54.8)**

25 **14.** The Defendants are persons who either own, operate, lease or lease to a place  
 26 of public accommodation or a facility open to the public. As such, the Defendants are  
 27 required to (1) ensure that all construction, alteration, or modification is barrier free and  
 28 complies with the Americans with Disabilities Act Accessibility Guidelines  
 ("ADAAG") and Title 24 of the California Code of Regulations (aka "California

1 Building Code"); and (2) remove all existing barriers where such removal is "readily  
2 achievable." The Defendants have failed to meet these obligations. The existence of  
3 readily achievably removed barriers and barriers in violation of the ADAAG and/or  
4 California Building Code, including, but not limited to, there were no accessible  
5 entrance into the bathrooms, due to excessive pressures required to open the bathroom  
6 doors, and there were inaccessible features in the bathrooms, is unlawful and has  
7 resulted in the defendants' failure to provide full and equal accommodations,  
8 advantages, facilities, privileges and/or services to the Plaintiffs.

9 **IV. FOURTH CAUSE OF ACTION: NEGLIGENCE (On behalf of Plaintiffs and**  
10 **Against All Defendants)**

11 **15.** The Defendants had a general duty and a duty arising under the Americans  
12 with Disabilities Act and the Unruh Civil Rights Act and California Disabled Persons  
13 Act to provide safe, convenient, and accessible facilities to the Plaintiffs in the running  
14 of their Restaurant. Their breach of this duty, as alleged in the preceding paragraphs,  
15 has caused injury and damage as alleged above.

16 **PRAYER:**

17 Wherefore, Plaintiffs pray that this court award damages and provide relief as  
18 follows:

19  
20 **1.** For injunctive relief, compelling Defendants to comply with the Americans  
21 with Disabilities Act and the Unruh Civil Rights Act. **Note:** the Plaintiffs are not  
22 invoking section 55 of the California Civil Code and are not seeking injunctive relief  
23 under that section.

24 **2.** Damages under the Unruh Civil Rights Act and/or the California Disabled  
25 Persons Act. **Note:** A Defendant cannot be held liable for damages under both the  
26 Unruh Civil Rights Act and the California Disabled Persons Act and the Plaintiffs will  
27 make an election at trial depending upon the evidence amassed.  
28

1           3. Reasonable attorneys' fees, litigation expenses and costs of suit, pursuant to  
2 42 U.S.C. § 12205; Cal. Civ. Code §§ 52 and 54.3 and Cal. Civ. Proc. § 1021.5.

3 Dated: July 21, 2008           CENTER FOR DISABILITY ACCESS, LLP  
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5  
6 By:  \_\_\_\_\_  
7           MARK D. POTTER  
8           Attorneys for Plaintiff

9                           **DEMAND FOR JURY TRIAL**

10           Plaintiff hereby demands a jury for all claims for which a jury is permitted.

11 Dated: July 21, 2008           CENTER FOR DISABILITY ACCESS, LLP  
12

13  
14 By:  \_\_\_\_\_  
15           MARK D. POTTER  
16           Attorneys for Plaintiff  
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JS 44 (Rev. 12/07) (and rev 1-16-08)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

**I. (a) PLAINTIFFS**

MARY JO KITTOK &amp; CURTIS BELL

**DEFENDANTS**

ROWTOWN, INC., A California Corporation, and DOES 1 through 100

(b) County of Residence of First Listed Plaintiff Riverside County  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Mark D. Potter/Russell C. Handy SBN 166317/195058  
The Center for Disability Access, LLP  
100 E. San Marcos Blvd., Suite 400  
San Marcos, CA 92069 Ph: (760) 480-4162 Fx: (760) 480-4170

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCAL COURT AND LAND INVOLVED.

Attorneys (If Known)

**C08 03559****RS****II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ 1 ☐ 1 PTF DEF Incorporated or Principal Place of Business In This State ☐ 4 ☐ 4
- Citizen of Another State ☐ 2 ☐ 2 PTF DEF Incorporated and Principal Place of Business In Another State ☐ 5 ☐ 5
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities Employment <input checked="" type="checkbox"/> 446 Amer. w/Disabilities—Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
			<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
		<b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus—Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions		

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C. Section 12101

Brief description of cause:

American's with Disabilities Act

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

**IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)**☐ SAN FRANCISCO/OAKLAND☒ SAN JOSE

DATE

July 21, 2008

SIGNATURE OF ATTORNEY OF RECORD

**ORIGINAL**